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7 JOHN P. ANDERSON,
8 Plaintiff,
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10 v.
11 JACK DURAN, et al.,
12 Defendants.

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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 Case No. 13-cv-04825-RS

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**ORDER DISMISSING THE TRIBAL
ENTITIES, GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AS TO THE INDIVIDUAL
DEFENDANTS, AND DENYING
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

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I. INTRODUCTION

13 Plaintiff John Anderson is the Sheriff of Madera County, located outside of Fresno in the
14 Eastern District of California. The specific dispute at issue in this case is but a piece of a larger
15 struggle which began in 2011 for control and direction of the Picayune Rancheria of the
16 Chukchansi Indians ("the Tribe"), a federally recognized tribe. The territory of the Tribe rests
17 wholly within Madera County. At its core, this action represents a reaction by the plaintiff
18 Sheriff to orders he has received from certain tribal factions directing him to intercede against
19 their opponents. While the entirety of the case rests on actions taken within the Central District of
20 California, the parties do not dispute venue in this district as will become apparent below.

21 In August 2013, individuals purporting to represent the tribal council filed suit in tribal
22 court against Anderson and others seeking damages and injunctive relief. The tribal court issued a
23 temporary restraining order directing Anderson, who is not a member of the Tribe, to take certain
24 steps in execution of his official duties as Sheriff. Shortly thereafter, Anderson filed suit in this
25 Court, seeking a temporary restraining order ("TRO") and preliminary injunction against the
26 Tribe, affiliated tribal entities, individual members of a group purporting to comprise the
27 legitimate tribal council (the "Lewis Faction"), and the judge and clerk of the purported tribal
28 court (the "Lewis Tribunal"). Anderson sought to prevent any of the individuals or entities from

1 enforcing the TRO issued by the Lewis Tribunal and to stay further proceedings against him in
2 that court. This Court conducted a hearing that same day at which representatives for the Lewis
3 Faction as well as from a competing group, the Ayala Faction, participated. These two groups,
4 along with a third contingent known as the Reid Faction, each purport to represent the Tribal
5 entities in this action. At the conclusion of the hearing, Anderson's TRO was granted and an order
6 to show cause issued as to his application for a preliminary injunction. The terms of the TRO
7 were later incorporated into a preliminary injunction, which remains in effect.

8 Anderson now moves for summary judgment, seeking declaratory and injunctive relief
9 against the Tribal entities and the individual defendants. The Lewis/Reid Faction, on behalf of the
10 Tribal entities and individual defendants, opposes that motion and simultaneously moves for
11 judgment on the pleadings or, in the alternative, summary judgment. The Tribal Court defendants,
12 Jack Duran and Donna Howard, join the Lewis/Reid Faction's opposition and motion. The Ayala
13 Faction, on behalf of the Tribal entities, joins Anderson's motion and opposes the Lewis/Reid
14 Faction's counter-motion.

15 For the reasons set forth below, Anderson's motion is granted as to the individual
16 defendants. His motion is denied, and the case is dismissed, as to the Tribal entities on the basis
17 of sovereign immunity. The Lewis/Reid Faction's motion is denied.

18 II. BACKGROUND

19 The saga underlying this action tells the story of shifting allegiances and confusing
20 occurrences. As noted above, the Tribe is a federally-recognized tribe located in Madera County,
21 California. The Chukchansi Economic Development Authority (CEDA) is a wholly-owned,
22 unincorporated unit of the tribe, which is located on the Rancheria immediately adjacent to the
23 Tribe's gaming facility. The Chukchansi Indian Housing Authority (CIHA) is also a wholly-
24 owned, unincorporated unit of the Tribe. It has historically operated under the independent control
25 and guidance of directors appointed by the Tribe. Collectively, the Tribe, CEDA, and CIHA are
26 referred to herein as the "Tribal entities."

27 The California Rancheria Act of 1958 terminated the Tribe's federal relationship, stripped

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1 its members of their status as Indians, and distributed through the Bureau of Indian Affairs
2 (“BIA”) land previously held in trust for the Tribe to private ownership subject to state and local
3 laws. *See Hardwick v. United States*, Case No. 79-1710-JF, 2006 WL 3533029 (Dec. 7, 2006)
4 (recounting the history of the Tribe). In 1979, individuals representing thirty-four of the
5 terminated tribes, including the Picayune Rancheria, brought a class action lawsuit in the Northern
6 District of California to challenge the termination of the trust relationship under the California
7 Rancheria Act. A stipulated judgment was entered that restored the Indian status of members of
8 seventeen of the former tribes, including the Picayune Rancheria. The settlement required the
9 Secretary of the Interior to recognize the tribes and provided a mechanism whereby former tribal
10 lands could be reconveyed to the United States to be held in trust for the benefit of the individual
11 tribes. The court retained jurisdiction for disputes arising from that settlement.

12 The Picayune Rancheria began taking formal steps to reorganize in 1986. Disputes soon
13 arose as to the boundary of the Picayune Rancheria relative to the neighboring North Fork
14 Rancheria and the state and local tax consequences flowing from the termination and restoration of
15 the tribe. A second stipulated judgment was entered in this district in 1987, confirming the
16 boundaries of the two Rancherias and attempting to resolve the tax dispute. It did not, and
17 additional disputes arose between the Tribe and Madera County concerning ad valorem property
18 taxes and land use to develop hotel and gaming facilities.

19 In 2007, Madera County and the Tribe agreed to settle three pending lawsuits in the
20 Madera County Superior Court and the Northern District of California concerning taxation and
21 land use of a parcel of property in Madera County owned by the tribe and on which it had
22 developed the Chukchansi Gold Resort & Casino (“the Casino”). As part of the “Settlement
23 Agreement,” the Tribe agreed to pay various sums to the Madera County General Fund, the
24 Yosemite Unified School District, and a trust account to be disbursed pursuant to a memorandum
25 of understanding (“2007 MOU”). In exchange, the County agreed to remove its opposition to the
26 Tribe’s pending fee-to-trust application before the Department of Interior to convert the property
27 into tribal land.

1 Relevant to this litigation, the 2007 MOU included several provisions pertaining to law
2 enforcement on the Rancheria and other tribal land. California has held criminal law enforcement
3 jurisdiction on tribal lands within the state since 1953 pursuant to Public Law 280,¹ and the 2007
4 MOU begins by confirming joint law enforcement authority between the Tribe and the County.
5 Pursuant to the MOU, the Tribe is to have primary responsibility to maintain order and safety
6 within the Rancheria and all lands held in trust by the United States for the benefit of the Tribe,
7 with assistance “from time to time” by the Madera County Sheriff’s Department. Additional
8 provisions require the Sheriff to provide law enforcement services related to the gaming facility.
9 The Tribe agreed to a limited waiver of sovereign immunity for any mediation or litigation
10 necessary to interpret and enforce the agreement. The parties further agreed to submit any
11 subsequent litigation arising out of the MOU to the federal court in this district. The Settlement
12 Agreement was signed by the Tribe, CEDA and Madera County, among others. The MOU was
13 signed by the Tribe and the County. Neither CIHA nor the Sheriff’s office were parties to either
14 agreement.

15 The Tribe has been subject to an intra-Tribal leadership dispute since December 3, 2011,
16 when a disagreement arose as to whether one of the individuals elected to the Tribal Council was
17 eligible to be seated in that body. That dispute lead to a split between the Lewis Faction and the
18 Reid Faction. At that time, the Ayala Faction sided with the Lewis Faction. In February 2013, a
19 second split arose between the Ayala Faction and the Lewis Faction. Thus, three different groups
20 have purported to represent the Tribal Council and other Tribal entities during the events leading
21 to the instant case.

22 In the midst of this conflict, both the Lewis Faction and the Ayala Faction established
23 tribal courts, each purporting to be the sole legitimate adjudicatory body of the tribe. The two

¹ Enacted on August 15, 1953, Public Law 83-280 (commonly referred to as “Public Law 280”) provides that five states, including California, “shall have jurisdiction over offenses committed by or against Indians” in Indian country “to the same extent that such state” has criminal jurisdiction elsewhere within the state.

1 tribunals have issued conflicting orders each recognizing the bodies that appointed them as the
2 Tribe's sole authorized government and otherwise attempting to exert control over various aspects
3 of the Tribal dispute, including tribal property and financial assets. Specifically at issue in this
4 case, representatives of the Lewis Faction filed an action in the Lewis Tribunal against individuals
5 from the competing factions and against Anderson in his official capacity, seeking injunctive relief
6 and \$5 million in damages. In August 2013, Jack Duran, Jr., judge of the Lewis Tribunal, issued a
7 TRO against Anderson, including several directives concerning his law enforcement activities on
8 the Rancheria as they pertained to the Ayala Faction, which at the time was physically occupying
9 the Casino and other tribal property.

10 In October 2013, Anderson brought this action seeking declaratory and injunctive relief
11 against the individuals who brought the underlying tribal complaint in the Lewis Tribunal, the
12 judge and clerk of the Lewis Tribunal, the Tribe, CEDA, and CIHA. Representatives of the Lewis
13 and Ayala Factions appeared on behalf of the Tribal entities at a hearing concerning the plaintiff's
14 application for a TRO; representatives for the Reid Faction later appeared as well on behalf of the
15 Tribal entities. This Court found the tribal TRO issued by Duran and the pending litigation in the
16 Lewis Tribunal posed an imminent and irreparable threat to public safety as it sought to limit or
17 control Anderson's exercise of his official duties. Accordingly, a TRO was issued by this Court
18 enjoining defendants from proceeding with the action that was then pending in the Lewis Tribunal.
19 Defendants were further enjoined not to order, issue, enforce or attempt to enforce any order,
20 judgment, ruling or decree of any kind against Anderson, and a hearing was set to hear his
21 application for a preliminary injunction. The parties thereafter stipulated to an extension of the
22 TRO and, later, to imposition of a preliminary injunction on the same terms as the TRO.

23 Shortly after this Court entered its TRO, the complainants in the underlying Lewis
24 Tribunal action voluntarily withdrew their tribal complaint against Anderson. Duran thereafter
25 vacated the tribal TRO against Anderson and dismissed without prejudice the entire Tribal Court
26 action against him.

27 Having since resolved their differences, at least temporarily, the Lewis and Reid Factions

1 conducted a joint tribal election on December 7, 2013, electing two members from each group to
2 the four open Tribal Council seats. The combined Lewis/Reid Faction responded jointly to
3 Anderson's motion for summary judgment and submitted a joint motion for judgment on the
4 pleadings or, in the alternative, summary judgment. The two factions were represented by
5 separate counsel at the hearing on these motions. The Ayala Faction, now referring to itself as the
6 Ayala/McDonald Faction, held a separate election on the same date and continues to oppose the
7 Lewis and Reid Factions in this matter. Results of both elections were forwarded to the BIA.

8 In February 2014, the BIA Pacific Regional Director issued a decision finding that no
9 election conducted since 2011 resolved the tribal leadership dispute and declaring the BIA would
10 recognize the last undisputed tribal council, elected in 2010, on an interim basis for government-
11 to-government purposes. That council includes members from each of the Lewis, Reid, and
12 Ayala/McDonald Factions. The Ayala/McDonald Faction filed a Notice of Appeal with the
13 Interior Board of Indian Appeal, which has yet to issue a final determination of the matter, and
14 which in any event would not necessarily resolve the dispute as only the Tribe has the authority to
15 determine its leadership.

16 Anderson now moves for summary judgment on his claims for declaratory and injunctive
17 relief. The Lewis/Reid Faction, on behalf of the individual defendants and the Tribal entities,
18 opposes that motion and simultaneously brings a motion for judgment on the pleadings or, in the
19 alternative, summary judgment on the grounds that this Court lacks jurisdiction over this matter.
20 Duran and Howard joined these motions. The Ayala/McDonald Faction, while not entirely
21 agreeing with some of Anderson's legal arguments, joins his motion as far as the relief requested
22 and opposes the cross-motion by the Lewis/Reid Faction.

23 III. LEGAL STANDARD

24 Summary judgment is appropriate "if the movant shows that there is no genuine dispute as
25 to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. Proc.
26 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue
27 of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also* Fed. R. Civ.

1 Proc. 56(c)(1)(A). If the movant succeeds, the burden then shifts to the nonmoving party to “set
2 forth specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 322 n.3;
3 *see also* Fed. R. Civ. Proc. 56(c)(1)(B). A genuine issue of material fact is one that could
4 reasonably be resolved in favor of the nonmoving party, and which could “affect the outcome of
5 the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court must view the
6 evidence in the light most favorable to the nonmoving party and draw all justifiable inferences in
7 its favor. *See id.* at 255.

8 Rule 12(c) of the Federal Rules of Civil Procedure provides that “[a]fter the pleadings are
9 closed—but early enough not to delay trial—a party may move for judgment on the pleadings.”
10 Such a motion, is “functionally identical” to a Rule 12(b) motion to dismiss for failure to state a
11 claim, differing only in that it is filed after pleadings are closed. *See Dworkin v. Hustler
12 Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). A motion for judgment on the pleadings
13 rests only on the facts as presented in the pleadings. When, as here, such a motion presents
14 matters outside the pleadings, the court has discretion to consider those matters and treat the
15 motion as one for summary judgment under Rule 56 so long as the parties are given notice and
16 provided “a fair opportunity to present material relevant to summary judgment.” *In re Mortgage
17 Elec. Registration Sys., Inc.*, 754 F.3d 772, 781 (9th Cir. 2014). That requirement is satisfied here
18 where defendants noticed their motion as one for judgment on the pleadings or, in the alternative,
19 summary judgment and where the parties adopted a joint schedule to brief and offer evidence on
20 what were effectively cross-motions for summary judgment.²

21 “When parties submit cross-motions for summary judgment, ‘[e]ach motion must be
22 considered on its own merits.’” *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249
23 F.3d 1132, 1136 (9th Cir. 2001) (quoting William W. Schwarzer, et al., *The Analysis and*
24 *Decision of Summary Judgment Motions*, 139 F.R.D. 441, 499 (Feb.1992)). “In fulfilling its duty

26 ² The Court also informed the parties at the hearing on these motions of its intent to treat
27 defendants’ motion as one for summary judgment. None of the parties objected.

1 to review each cross-motion separately, the court must review the evidence submitted in support
2 of each cross-motion.” *Id.* Federal Rule of Civil Procedure 56(c) requires that “[a] party asserting
3 that a fact cannot be or is genuinely disputed must support the assertion by: [] citing to particular
4 parts of materials in the record . . . or [] showing that the materials cited do not establish the
5 absence or presence of a genuine dispute, or that an adverse party cannot produce admissible
6 evidence to support the fact.”

7 IV. DISCUSSION

8 A. Federal Court Jurisdiction

9 Federal courts possess only limited jurisdiction. “There is a general presumption against
10 federal court review, and the burden of establishing the contrary rests on the party asserting
11 jurisdiction.” *Lanza v. Ashcroft*, 389 F.3d 917, 930 (9th Cir. 2004). It is well-established that
12 jurisdiction is assessed as of the time the complaint is filed, “and subsequent events cannot divest
13 the court of that jurisdiction.” *Smith v. Campbell*, 450 F.2d 829, 832 (9th Cir. 1971); *see Mullan*
14 *v. Torrance*, 22 U.S. 537, 539–40 (1824).

15 Anderson relies primarily on this Court’s undisputed jurisdiction pursuant to 28 U.S.C.
16 § 1331 to adjudicate the question of whether a tribal court has exceeded the limits of its
17 jurisdiction over a nonmember. *See Strate v. A-1 Contractors*, 520 U.S. 438, 448–49 (1997)
18 (citing *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians (National Farmers)*, 471
19 U.S. 845, 852–53 (1985)).³ That jurisdiction does not, however, extend to the looming question of
20 the rightful leadership of the Tribe. “Tribal election disputes, like tribal elections, are key facets
21 of internal tribal governance and are governed by tribal constitutions, statutes, or regulations.”
22 *Attorney’s Process and Investigation Services, Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609

23
24 ³ As a prudential matter, “a federal court should stay its hand ‘until after the Tribal Court has had a
25 full opportunity to determine its own jurisdiction.’” *El Paso Natural Gas Co. v. Nezsoosie*, 526
26 U.S. 473, 483 (1999) (quoting *National Farmers*, 471 U.S. at 857). That requirement appears to
27 be satisfied here, as the Lewis Tribunal already concluded it had jurisdiction over Anderson in the
underlying complaint and the Lewis Council’s adjudicatory procedures do not provide for
appellate review. None of the defendants now argue Anderson has failed to exhaust his tribal
remedies.

1 F.3d 927, 943 (8th Cir. 2010). Such questions of tribal law are “beyond the purview of the federal
2 agencies and the federal courts.” *Id.*

3 This case presents the novel issue of whether a federal district court has jurisdiction
4 consistent with *National Farmers* when the legitimacy of the tribal court is itself called into
5 question by an ongoing tribal leadership dispute. According to the Lewis/Reid Faction, if
6 members of the Lewis Faction were not acting as lawful tribal officers at the time of the
7 underlying action, their actions cannot be imputed to the tribe and this dispute does not present
8 any federal question for review. In order to implicate federal question jurisdiction, they argue, the
9 Court would first have to resolve the tribal dispute, find the members were operating under lawful
10 tribal authority at that time, and only then determine whether they acted beyond the scope of that
11 authority.

12 Though mindful of the limits of federal court jurisdiction in matters of tribal sovereignty,
13 the undeniable jurisdiction to consider if a tribal court has exceeded its authority over a non-
14 member cannot be undone simply because an underlying internecine battle implicates the authority
15 of the purported tribal court. Whether or not the Lewis Council and Tribunal constituted the
16 legitimate tribal authority at the relevant time, defendants plausibly held themselves out as such by
17 filing complaints and issuing orders on behalf of the Tribe. Moreover, those entities and
18 individuals continued to hold themselves out as lawful tribal representatives through the early
19 stages of this litigation. As noted above, jurisdiction is assessed on the facts as they existed at the
20 moment of filing. On that basis, Anderson has satisfied his burden to establish federal court
21 jurisdiction over this matter so long as relief may be issued without implicating non-justiciable
22 issues of tribal governance.

23 **B. Tribal Sovereign Immunity**

24 Plaintiff’s action is directed at three groups of defendants: the Tribal entities; the Lewis
25 Council tribal leaders Chance Alberta, Carl Bushman, David Castillo, Lynn Chenot, Melvin Espe,
26 Reggie Lewis, and Irene Waltz; and the Lewis Tribunal defendants Jack Duran, Jr. and Donna
27 Howard. “Absent congressional abrogation or explicit waiver, sovereign immunity bars suit

1 against an Indian tribe in federal court.” *Kiowa Tribe of Oklahoma*, 523 U.S. at 754. “This
2 immunity protects tribal officials acting within the scope of their valid authority.” *Burlington N.*
3 & *Santa Fe Ry. Co. v. Vaughn (Vaughn)*, 509 F.3d 1085, 1091–92 (9th Cir. 2007). The parties
4 agree that CEDA and CIHA are arms of the Tribe and, as such, enjoy the same degree of
5 sovereign immunity.

6 Anderson concedes that the Tribal entities are entitled to sovereign immunity, but argues
7 the Tribe effectively waived its sovereign immunity through the 2007 MOU and Settlement
8 Agreement. As the party asserting waiver, it is Anderson’s burden to prove the Tribal entities
9 have “unequivocally expressed” their consent to suit. *Santa Clara Pueblo v. Martinez*, 436 U.S.
10 49, 58 (1978)

11 The 2007 MOU, signed by both the Tribe and CEDA, contains an explicit limited waiver
12 of sovereign immunity:

13 The Tribe agrees to a limited waiver of sovereign immunity for the
14 purposes of completion of mediation and enforcement as provided
15 for at Section 3 of the Settlement Agreement and Stipulation to
16 Jurisdiction agreed to by the Parties on February 14, 2007.

17 MOU, ¶ 7.3. Similarly, the Settlement Agreement provides:

18 Should a dispute arise as to the application, interpretation, and
19 enforcement of the terms of this Agreement, the Parties agree to
20 submit such dispute to mediation before a mutually agreed upon
21 qualified mediator familiar with Indian Law. The Tribe agrees to a
22 limited waiver of sovereign immunity for purposes of completion of
23 such mediation.

24 [¶]

25 The parties each acknowledge and agree that the Tribe’s waiver of
26 sovereign immunity for purposes of the Tribal Action shall continue
27 for purposes of any proceedings [in the Northern District] for
28 interpretation or enforcement of the Agreement.

Settlement Agreement, ¶¶ 3.0, 3.0.1.2. The relevant question here is whether the waiver in either
the MOU or the Settlement Agreement applies to this action by Anderson.

As an initial matter, defendants note that neither Anderson nor the Madera County
Sheriff’s office was a party to either agreement. Rather, the counter-party to the Tribal entities

1 was the County of Madera. The Settlement Agreement specifically limits third-party rights
2 including, according to the Tribe, the right to exercise the Tribe's limited waiver of sovereign
3 immunity expressed therein.⁴ Without fully briefing the issue, Anderson has suggested he should
4 be considered a county officer for purposes of enforcing the MOU in this action, though in other
5 aspects he is a state official entitled to state immunity from the underlying tribal complaint.

6 It is not necessary to determine whether Anderson is a proper party to enforce either
7 agreement as Anderson's complaint cannot fairly be characterized to present "a dispute . . . as to
8 the application, interpretation, and enforcement of the terms" of either the Settlement Agreement
9 or the MOU. Both agreements burden the Sheriff's law enforcement duties, particularly as they
10 pertain to the Casino. In exchange, the Tribe agreed to certain payments to the County to offset
11 the costs of law enforcement. Anderson does not, however, seek to enforce the payment
12 provisions on behalf of his office or the county. While the underlying tribal complaint and
13 subsequent TRO issued by the Tribal Court, if they remained in effect, might very well burden
14 Anderson's ability to perform according to the MOU and Settlement Agreements, his challenge
15 thereto does not "unequivocally" constitute an action to interpret or enforce the agreements. The
16 limited waivers therein do not extend to this action against the Tribe and CEDA. As Anderson
17 offers no other basis, at this time, to find consent by CIHA, all three Tribal entities must be
18 dismissed from this action on the basis of sovereign immunity.⁵

19

20 ⁴ The Settlement Agreement provides, "Nothing in this Agreement, whether express or implied, is
21 intended to confer any rights or remedies to any persons other than the parties to it, and their
22 respective successors and permitted assignees. Nothing in this Agreement is intended to relieve or
23 discharge the obligation or liability of any third party, nor shall any provision give any third party
24 any right or cause of action over or against any party to this Agreement." Settlement Agreement
25 ¶ 7.8.

26 ⁵ CIHA was not a party to either the 2007 MOU or Settlement Agreement. Representatives of the
27 Ayala Faction, however, entered into an agreement with Madera County on behalf of CIHA in
2013 concerning access to the CIHA facilities. The agreement included a limited waiver of
sovereign immunity for any actions by the county or the Sheriff to "interpret or enforce the terms
of the Agreement." Complaint, Exh. 12, ¶ 14. A prior round of briefing (later withdrawn)
challenged this waiver as ineffective on that basis, an argument not renewed in the current
motions. Regardless of whether this case falls within the scope of the limited waiver—and setting
aside the issue of whether the agreement validly binds CIHA—Anderson does not renew his
argument that the 2013 release provides any additional basis to find consent by the Tribal entities

1 Although sovereign immunity extends to tribal officers, such individuals may be amenable
2 to suit for prospective injunctive relief. Under the doctrine of *Ex Parte Young*, “tribal sovereign
3 immunity does not bar a suit for prospective relief against tribal officers allegedly acting in
4 violation of federal law.” *Vaughn*, 509 F.3d at 1092; *Salt River Project Agr. Imp. & Power Dist.*
5 *v. Lee*, 672 F.3d 1176, 1181 (9th Cir. 2012) (citing *Ex parte Young*, 209 U.S. 123 (1908)). The
6 same is true of tribal judicial officers. *See United States v. Yakima Tribal Court*, 806 F.2d 853,
7 861 (9th Cir. 1986).

8 Plaintiffs' complaint for declaratory and injunctive relief is limited to prospective, non-
9 monetary relief as contemplated by *Ex Parte Young*. The gravamen of his complaint is that the
10 individual defendants acted beyond the scope of any lawful authority they might possess as tribal
11 leaders and judicial officers by exercising jurisdiction over him in the underlying suit. To the
12 extent those claims are valid, sovereign immunity will not stand as a bar to this Court's authority.
13 *See, e.g., Burlington N. R. Co. v. Blackfeet Tribe of Blackfeet Indian Reservation*, 924 F.2d 899,
14 906 (9th Cir. 1991), as amended (Mar. 18, 1991), *overruled on other grounds by Big Horn Cnty.*
15 *Elec. Co-op., Inc. v. Adams*, 219 F.3d 944 (9th Cir. 2000) (recognizing *Ex Parte Young* permits
16 injunctive action against tribal leaders but dismissing on sovereign immunity grounds after finding
17 the officials acted within the scope of their authority).

C. Justiciability

19 Shortly after this Court issued the TRO enjoining defendants from enforcing the Lewis
20 Tribunal's TRO against Anderson, the individual defendants withdrew their tribal complaint and
21 dismissed the suit without prejudice. Anderson has submitted numerous exhibits purporting to
22 demonstrate that tensions remain high on the Rancheria. He also submitted a letter sent from the
23 Lewis/Reid Faction to his office shortly after the December 2013 election ostensibly prohibiting
24 him from further contact with the Ayala/McDonald Faction or its representatives. There is no

26 to this action. As it is Anderson's burden to prove consent, the Court need not reach out to
27 determine the applicability of a waiver upon which Anderson no longer relies.

1 evidence, however, that defendants have pursued any further action against Anderson in any tribal
2 court (whether constituted by the Lewis Faction or any other representative of the Tribe).

3 “Voluntary cessation of challenged conduct moots a case . . . only if it is ‘absolutely clear
4 that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Adarand
5 Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (quoting *United States v. Concentrated
6 Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)). The party asserting mootness bears a
7 “heavy burden” to persuade the court that “the challenged conduct cannot reasonably be expected
8 to start up again.” *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC)*, 528 U.S.
9 167, 189 (2000).

10 Although the letter from the Lewis/Reid Faction does not carry any legal authority and is
11 not the subject of any relief properly sought in this action, it weighs against defendants in meeting
12 their “heavy burden” to demonstrate with absolute clarity that the allegedly wrongful behavior
13 could not reasonably be expected to recur. Defendants have not accepted Anderson’s invitation to
14 renounce any tribal court authority over Anderson in his official capacity, nor offered any
15 assurance they would not seek the same relief previously granted by the Lewis Tribunal in the
16 absence of this Court’s continuing jurisdiction. On that basis, defendants have not shown this case
17 to be moot.

18 **D. Tribal Court Jurisdiction**

19 Turning finally to the merits of Anderson’s claims for declaratory and injunctive relief, the
20 critical issue is whether the purported tribal and judicial officers acted consistent with federal law
21 in purporting to exercise jurisdiction over Anderson. “[A]bsent express authorization by federal
22 statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited
23 circumstances.” *Strate*, 520 U.S. at 445. This general rule is subject to two broad exceptions.
24 First, a tribe may regulate “the activities of nonmembers who enter consensual relationships with
25 the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.”
26 *Montana v. United States*, 450 U.S. 544, 565–66 (1981). Second, “[a] tribe may also retain
27 inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its

1 reservation when that conduct threatens or has some direct effect on the political integrity, the
2 economic security, or the health or welfare of the tribe.” *Id.* When tribal officials seek to assert
3 jurisdiction over non-Indians, they bear the burden to establish one of the two *Montana*
4 exceptions. *Atkinson Trading Co.*, 532 U.S. at 654; *Nevada v. Hicks*, 533 U.S. 353, 359 (2001).

5 The Lewis Tribunal’s memorandum order purported to find jurisdiction under both of the
6 *Montana* exceptions. According to the Lewis Tribunal, the 2007 settlement and MOU constitute a
7 contractual relationship between the Tribe and County Officers, including the Sheriff. In addition,
8 the Tribunal found the second *Montana* exception to apply as the subject of the complaint before
9 the tribunal concerned government representation and control.

10 As to the first *Montana* exception, the Lewis Tribunal’s reliance on the MOU is misplaced.
11 As discussed above, Anderson is not a party to the Settlement Agreement or MOU. The Tribe
12 may have standing to enforce his third-party obligations under these agreements, but defendants
13 do not point to any authority finding tribal jurisdiction over third parties not otherwise bound by a
14 tribal contract. In any case, if the purpose of the compliant in the Lewis Tribunal was to enforce
15 contractual rights arising from the 2007 Settlement Agreement and MOU, the proper venue would
16 have been this Court, not the Lewis Tribunal.

17 As to the second *Montana* exception, the Tribe would have a more compelling case if the
18 intent of the underlying tribal complaint and TRO were to compel Anderson solely to abstain from
19 supporting one side over the other in the intra-tribal dispute. That TRO, however, went beyond
20 prohibiting Anderson from favoring the Ayala Faction and compelled him to recognize the Lewis
21 Faction. For example, the Lewis Tribunal TRO prohibited Anderson in his official capacity from
22 “dealing in any manner whatsoever with Ayala and the Ayala Faction.” Complaint, Exh. 3, at 4.
23 It further ordered Anderson to “cease and desist contravening the Lewis Tribal Council’s rightful
24 authority.” *Id.*, at 5. Rather than acting to insulate the Tribe’s political integrity, the tribal
25 complaint and TRO effectively pulled Anderson into political matters of the Tribe. In sum, the
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27

1 individual defendants have not shown that either of the *Montana* exceptions applies.⁶

2 V. CONCLUSION

3 For the reasons set forth above, Anderson's motion for summary judgment is denied and
4 the case is dismissed as to the Tribal entities based on sovereign immunity. His motion is granted
5 as to the individual defendants. Anderson is therefore entitled to a declaratory judgment that the
6 individual defendants exceeded any lawful authority they possessed as putative representatives of
7 the Picayune Rancheria of the Chukchansi Indians by asserting jurisdiction over Anderson in the
8 underlying tribal court complaint. The individual defendants are permanently enjoined from
9 bringing in any lawfully constituted tribal court any claims that were brought or could have been
10 brought in the underlying tribal complaint against Anderson. The individuals are further
11 permanently enjoined from reviving their efforts to order injunctive relief against Anderson based
12 upon such claims. Defendants' motion for judgment on the pleadings, construed here as a motion
13 for summary judgment, is denied.

14

15 **IT IS SO ORDERED.**

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17 Dated: 10/2/14

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19 RICHARD SEEBORG
20 United States District Judge

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25 ⁶ In the alternative, Anderson argues he is exempt from tribal jurisdiction on the grounds of state
26 sovereign immunity or qualified governmental immunity. Either immunity, if applicable, would
27 bar only the underlying claim for monetary damages and not the accompanying claim for
injunctive relief. It is not necessary to assess further Anderson's argument concerning immunity
in light of the foregoing analysis.